
In the Matter of the Final	:	Case XVIII
and Binding Arbitration between	:	No. 20070
	:	MIA - 219
CUDAHY POLICEMAN'S PROFESSIONAL	:	Decision No. 14331-A
& BENEVOLENT ASSOCIATION	:	
and	:	OPINION
	:	and
CITY OF CUDAHY	:	AWARD

APPEARANCES: For the City
 Law Firm of Mulcahy & Wherry, S.C. by Mark F. Vetter,
 Attorney-at-Law.

For the Union
 Law Firm of Gimbel, Gimbel & Reilly by Franklin Gimbel
 and Richard Reilly, Attorneys-at-Law.

PREHEARING PROCEEDINGS

Representatives of the Cudahy Policeman's Professional & Benevolent Association (hereinafter referred to as the "Union") and the City of Cudahy (hereinafter referred to as the "City"), commenced contract negotiations on November 19, 1975 on various issues in reopener which would become effective during the second year of the 1975-76 collective bargaining agreement. The parties engaged in collective bargaining in an attempt to reach agreement.

On January 27, 1976 the Union filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission initiate compulsory final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between the Union and the City of Cudahy on the issues of wages and paid health insurance after retirement. The Commission ordered that compulsory final and binding arbitration be initiated.

The undersigned was chosen to act as arbitrator, and hearings were held on April 23rd and April 30, 1976 in the Council Chambers of the Cudahy City Hall. Exhaustive briefs were submitted following the testimonial hearing by the parties.

ISSUES*

The parties' respective positions on the issues in dispute are as follows:

A. Cudahy Policeman's Professional & Benevolent Association

1. Article 8 - Wages. The Union has proposed to increase the wages of the Patrolmen, Detectives and Juvenile Officers by Eighty-five Dollars (\$85.00) per man per month above the amount which they were receiving during the year 1975.
2. Article 13 - Medical and Hospitalization Insurance. The Union has proposed to extend the present medical and hospitalization insurance coverage to those employees who retire between the age of 55 and 65, and the full premium for said insurance coverage to be paid by the City.

* A more comprehensive summary of issues and position of parties is attached as an appendix to the Decision.

B. City of Cudahy

1. Article 8 - Wages. The City has offered to increase the wages of the Patrolmen, Detectives and Juvenile Officers by Eighty Dollars and Fifty Cents (\$80.50) per man, per month above the amount which they were receiving during the year 1975.
2. Article 13 - Medical and Hospitalization Insurance. The City has offered to maintain the status quo medical and hospitalization insurance coverage and not to extend the coverage to those employees who retire between the ages of 55 and 65.

DISCUSSION

Settlement of disputes in collective bargaining involving law enforcement personnel is governed by Sec. 111.77 Wis. Stats. The statute provides that the arbitrator must select the final offer of one of the parties and issue an award incorporating that offer without modification. The statute further provides various criteria within which the arbitrator should make his decision. The parties have identified the most pertinent of these factors:

As to the Interests and Welfare of the Public.

The Union urges acceptance of its wage proposal as a necessary part of a package of benefits that would enable the City to attract qualified and competent law enforcement personnel, an obvious need in the interests and welfare of the citizens of the City of Cudahy. From testimony adduced at the hearing it would appear that law enforcement personnel are acutely aware of the benefits received by policemen in surrounding communities, and that this awareness is reflected in the overall morale, quality of work, and the inclination to seek employment in a particular community.

On the issue of retirement medical insurance benefits the Union cites Sec. 41.11 Wis. Stats. which permits the normal retirement age of a law enforcement officer at 55. The legislative intent is clear regarding this statute, and that is that the extraordinary demands of the job, both physical and mental are not met in the same manner as when the officer was younger. The demands placed on the career officer are more severe in these respects than those placed on the average employee in the public sector where the normal retirement age is 65. For the officer who does retire at age 55 the benefits of the National Health Care Insurance (Medicare) are not available for some ten years. If the officer does wish this protection he must pay for it out of his pension unless the City has agreed to extend coverage until Medicare benefits are available. In view of the aforementioned public policy of earlier retirement for law enforcement personnel and the desirability of this benefit in attracting and keeping competent personnel, the Union urges extension of full coverage medical and hospitalization insurance to age 65.

The City, however, opposes the measure citing the declining population of the City of Cudahy, the already high base tax rate, and the effect of the increase of compensation in terms of required cuts in other essential services. See City's Exhibits 4, 5 and 6 and the City Budget. The City contends that approval of the Union's proposal will create a burden on the Cudahy taxpayer which is not in the interest and welfare of the taxpaying public.

Another argument advanced by the City against the full coverage post-retirement insurance benefit is that the majority of the retiring policemen take jobs to supplement their pension income. The testimony of the Union's witness shows that approximately 80% take such jobs, most of which provide health insurance benefits. This would place the City in the position of paying benefits that would be the responsibility of the subsequent employer in the majority of cases. The Union's offer contains no limitation designed to meet this problem.

As to the City's Ability to Pay.

The City claims that it is unable to meet the demands of the Union's final proposal. The City lists declining revenue sources such as reduced federal revenue sharing and reduced state shared taxes, and the tax levy limitations imposed by Chapter 90 of the Laws of Wisconsin 1975 in addition to escalating costs as substantiation for the claim.

The arbitrator has reviewed Employer's Exhibit 16 and the exhibits following, including Exhibit 25 - the City of Cudahy budget. Without commenting on each phase of the City's budget, the City's exhibits undeniably show that the City of Cudahy is in a precarious financial condition. This condition buttresses the City's argument that in order to meet demands such as the Union's proposal, the City would have to borrow for operating funds. Another indicator in this respect is the extreme drop in the City's contingency fund from \$198,351 in 1975 to \$32,674 in 1976. Such a tight budget condition would not be determinative of the ability to pay issue were it not for the depletion of existing revenue sources.

In 1975 the City of Cudahy not only pushed its tax levy to the allowable figure of 13.64% under criteria set by Tax Levy Limitations legislation, but was forced to raise its levy beyond that figure by taking advantage of various exemptions. The City was also faced with a \$14,914 reduction in federal revenue sharing, and a \$40,644 reduction in state shared taxes. The burden this has imposed on the taxpayers of Cudahy is evident in the fact that the City has a net tax rate of \$28.79, substantially higher than the median of \$24.54 and 8th highest of the 30 communities in the Milwaukee Standard Metropolitan Statistical Area (Emp. Ex. 6).

In assessing the ability to pay and other factors as against the mean family income of the City of Cudahy, the arbitrator has had some difficulty. The City's figures are based on the 1970 census, while the Union figures, although current, provide only a range and include the St. Francis area. Perhaps no exact figures are available. The figures that are available seem to indicate however that Cudahy does not have a high mean family income in relation to the south side area communities or the entire metropolitan area for that matter.

The Union would appear to concede the financial position of the City of Cudahy, but defends the reasonableness of the proposal on the grounds that the cost of implementation of the Union proposal is only \$3,135.52 more than the City's proposal, and that the City may actually recognize a savings in retiring the higher paid patrolman sufficient to cover the Blue Cross premiums. The mechanics of this theory are set out in the Union's Exhibits 3 and 4. The exhibits show the impact in dollar amounts when a patrolman retires and is replaced by a new man. The substance of these computations is that a substantial dollar savings is realized as projected over three years. This is caused by replacing a man receiving higher wages, longevity pay, educational incentive, vacation, accumulated sick pay and other benefits, with a man having a lower base wage and a smaller accumulated benefit package.

The City contends that the Union's computations fail to recognize several critical cost factors which occur when a new man is hired to replace a retiree. These include:

- (1) Training Costs - The real cost of \$360 in putting an officer through the Academy, and the indirect cost of on-the-job training.
- (2) Equipment Costs - \$642 to equip a new man with uniforms and \$110 for a gun.
- (3) Loss of Productivity and Overtime Costs - In order to maintain the efficiency level of the department the City is forced to pay overtime to more senior patrolmen during the officer's training period. Also present, but intangible is the loss of productivity experienced until the new officer reaches a level of competence that approaches that of the man he replaced.

Although the Union has shown short run cost benefits that will serve to cushion the financial impact of retiring an eligible patrolman and hiring a new one, the inevitable costs, both direct and indirect, of replacing a seasoned veteran with an inexperienced recruit will eventually create a significant cost increase to the City should the Union proposal be accepted. When the force is eventually restored to a comparable level of experience the City will still be paying the additional cost of post-retirement health insurance benefits.

Comparison of Offers to Public Employees' Compensation in Comparable Communities.

As is usually the case, there is a difference in emphasis between the City and the Union: first, as to which communities should be utilized for comparative purposes and second, as to which aspects of compensation should come under consideration. Sec. 111.77(6)(d) Wis. Stats. offers no elaboration as to the meaning of "comparable" in selecting appropriate communities. As far as compensation is concerned the statute contemplates "wages, hours and conditions of employment".

*The Union has submitted a list of fifteen area communities with their 1976 base wages, and the percentage increase this represents over 1975 wages. For this chart to have any meaning under the statutory analysis, all fifteen of these communities must be shown to be comparable. The Union has not justified its choice of these particular communities except labeling them "area" communities. "Area" communities are not tantamount to "comparable" communities. Geographical proximity would be but one of a number of factors used to justify the choice. Another difficulty occasioned by the use of this chart is that the Union exhibits only the base wage portion of the policeman's total compensation. Surely the statute contemplates fringe benefits as a measure of comparability.

The City has attacked the propriety of nine of the communities chosen by the Union for comparative purposes on various grounds. The City notes that a number of these communities were determined to be inappropriate for comparative purposes by Arbitrator Stern in the 1975 Cudahy Fire Fighters arbitration proceedings. The City fails to note that one of the communities contained in its exhibits (Emp. Ex. #10 and #11), namely St. Francis, was also explicitly excluded, not only by Arbitrator Stern in the 1975 proceeding, but also by Arbitrator Weisberger in the recently decided 1976 Cudahy Fire Fighters proceedings. (More on that case later).

The choice of communities for comparative purposes is a weighty matter for the choice is likely to be determinative of the issue. Although the data provided by both parties is of interest to the arbitrator, the most acceptable communities, based on the information provided and prior negotiations are: South Milwaukee, Greenfield, West Milwaukee, Oak Creek, and Greendale.

An investigation of the compensation received in terms of both wages and fringe benefits shows that these communities are very much on a par. There is no severe dollar disparity evident in the comparison figures, and although Cudahy would appear to have lower base wages it was a substantially better benefit package that offsets the difference. As a practical matter, the \$4.50 difference between the Union and City proposals will not affect the comparative position of Cudahy among the chosen communities.

*It has been held that "comparable" means equivalent of being compared with; it does not mean identical. Wheeler v Barera 94 S. Ct. 2274 417 U.S. 402, 41 L. Ed. 159. See also Chemplex Co. v Tauber Oil Co. 309 F. Supp 904. It is enough that the comparables relied upon are sufficiently similar that an expert can form an opinion upon the subject in issue. In this case municipalities could be deemed comparable where they are substantially equal in the following areas: population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel and wages and fringe benefits paid such personnel.

Figures presented by both parties as to the likeliness of a trend for police departments granting post-retirement health insurance benefits, are undisputed. Retirement health insurance is a relatively new benefit which when offered is probably justified by the recently established policy of earlier retirement for law enforcement personnel. Both parties have chosen to mark the trend in terms of the police departments in the Milwaukee metropolitan area. Of the 22 communities, six provide 100% coverage and two provide 50% coverage. Most of the plans are subject to one limitation or another. It is interesting to note that the majority of the south side communities previously selected do have some form of aid in premium payment to the retired policeman. The arbitrator can see a trend establishing in the granting of this benefit, but there is a difficulty in determining what form the benefit should take to be considered acceptable. The plan offered by the Union would provide 100% full coverage to every retiring policeman. The Union's final offer contains no limitation other than the cessation of coverage at age 65. The arbitrator must assume that none was intended.

Comparison of Offers to Private Employees' Compensation in Comparable Communities.

The City notes that a survey of the 16 largest employers in Cudahy shows that only three offer paid health insurance after retirement.

While this may be true, comparisons based on this particular benefit are unsatisfactory when applied to the private sector. The normal retirement age in the private sector is age 65 when Medicare benefits accrue immediately, while public policy as contained in the Wisconsin Statutes favors earlier retirement at age 55, when Medicare benefits are not available.

Cost of Living.

On the issue of the reasonableness of the final offers in view of the increase in the cost of living, the City cites the national figures as supplied by the U.S. Department of Labor, while the Union encourages use of the Milwaukee area index as supplied by the Bureau of Labor Statistics. Sec. 111.77(6)(e) Wis. Stats. does not specify whether national or local figures should be utilized, but it would seem incumbent upon the arbitrator to consider the situation as it exists in the community where the employees work and live. In this case the situation is difficult to ascertain. There are probably no conclusive figures establishing a cost of living index for the City of Cudahy (at least none have been brought to the arbitrator's attention).

The City advances the national figure of 6.1% for March of 1976 - down from 7.0% for December of 1975. This would indicate a downward trend in consumer price increase percentages at least on the national level. In the context of its final offer, the City argues that its offer of a 7% wage increase and a 8.42% total compensation package increase is consistent with the changes in the consumer price index.

The Union, on the other hand, cites the Milwaukee cost of living figure of 8.8% for December of 1975. Undoubtedly this figure has decreased with the national figure of March 1976. That figure is also not conclusive in that it represents the entire Metropolitan Milwaukee Area. The Union has offered no evidence to the effect that the cost of living in Cudahy is higher or lower as a rule than the Milwaukee area in general.

Based on the information supplied, both offers would satisfactorily cover the loss of buying power occasioned by the increase in the consumer-price index.

CONCLUSION

Health insurance coverage upon retirement is a relatively new benefit resulting from recognized public policy favoring early retirement for law enforcement personnel*. The benefit would appear to be a natural extension of the various pension benefit programs and is of understanding value to the employees in that class in view of the fact that National Health Insurance (Medicare) benefits are not available to retirees until age 65.

In City of Waukesha and Waukesha Professional Policeman's Association WERC Dec. 11799 (Aug. 1973) the Union's proposal included such a benefit. The benefit was denied, however, in that the Union was unable to cite communities which enjoyed such a benefit and that it was a proper subject matter for final and binding arbitration. There has, however, been a change in that approach and since that decision there has been some kind of retirement health insurance coverage granted retired employees.

The arbitrator in the instant matter looks with favor upon the need and propriety of such a benefit. Retirees whose income suffers by reason of the abrupt change in the economic condition nevertheless remain in day-to-day need of health insurance protection, perhaps more so as age progresses. At the same time it is not disputed that a high percentage of law enforcement personnel by reason of the relative early retirement age of 55 remain productive and succeed in securing other employment.

The universal practice of employers today as part of the wage package granting medical and surgical insurance benefits to their employees includes those who are hired even after retiring from another job. There is, therefore, no discrimination between employees with respect to such fringe benefits.

Thus to require the old employer to extend such benefits to the retired employee makes such a proposal of questionable purpose.

The Union's final offer with respect to health insurance makes no distinction between persons who retire and reenter the employment market and those who do not.

In a proceeding similar to the one at hand involving the Cudahy Fire Fighters an award granted in favor of the Union in that case was based in part on what the arbitrator considered "two important limitations", the payment of one-half of the premium by the employee and the unavailability of the benefit to retire fire fighters who secure employment elsewhere and where the new employer agrees to pay health insurance costs. Cudahy Fire Fighters Association Local 1801, IAFF AFL-CIO and City of Cudahy WERC Dec. No. 14361-A (June 1976). The inference is clear that absent the described limitations the Union's proposal would have been found to be undesirable.

To provide for medical and surgical coverage for police personnel who gain new employment upon retirement, at the cost of the City when the new employer has a similar plan for all his employees would create an unnecessary monetary burden to the municipal taxpayer. In addition, it would encourage, if not create, inequities between employees. Thus the retiree who finds employment would enjoy double protection while the retiree who perhaps needs it more because of unavailability to the employment market would have single coverage. The inequity becomes obvious, and such a demand in normal voluntary collective bargaining either in public service or in private employment would be considered unacceptable.

The arbitrator is statutorily powerless to amend or otherwise fashion the final offer of either party by shearing the offer of the Union of its inequities so as to make it palatable.

The immediacy of the issue is however somewhat alleviated by the fact that although three officers are eligible for retirement, none of them are scheduled to do so in 1976. Certainly new negotiations would soon follow.

In the light of the evidence presented and in view of the statutory obligation "to select the final offer of one of the parties ...without modification", Sec. 111.77(4)(b), the arbitrator is compelled to conclude that the final offer of the City of Cudahy more reasonably responds to the criteria requirements under the Municipal Employment Relations Act.

*Sec. 41.02 (23)

AWARD

The terms of the applicable "final offer" contained in the document entitled "Final Offer of the City of Cudahy", received by letter dated April 16, 1976 shall be incorporated in the final agreement between the parties without modification.

Dated this 31 day of July A.D. 1976.

Max Raskin /s/
Max Raskin, Arbitrator

SUPPLEMENT TO DECISION

Summary of Issues and
Position of Parties

	CITY	UNION
Wages:	Increase of \$80.50 per man per month over 1975 compensation.	Increase of \$85.00 per man per month over 1975 compensation.
Retirement Insurance:	Not to extend present medical and hospitalization insurance coverage to those who retire between age 55 and 65.	Extend present medical and hospitalization insurance coverage to those who retire between age 55 and 65. (Full Premium)
Factors for Decision:		
	CITY	UNION
Interests and Welfare of Public:	<ol style="list-style-type: none"> 1) Declining Population 2) Average Income of \$11,691 for families in Cudahy 3) Effects of recession on population (layoffs) 4) Balancing the Budget 5) Effect of increase of compensation - would require cuts in other essential services. 6) A good percentage of retirees take jobs to supplement income (approx. 80%) - most provide health insurance 	<ol style="list-style-type: none"> 1) Desirable over-all working conditions: <ol style="list-style-type: none"> (a) Salary, fringe benefits (b) Morale, Quality of Work 2) Attracting Competent Officers 3) Awareness of Benefits Received in Surrounding Communities 4) Sec. 41.11 reducing the normal retirement age to 55. (With 30 years of service) 5) Stress Factors
	CITY	UNION
Inability to Pay:	<ol style="list-style-type: none"> 1) Declining revenue sources <ol style="list-style-type: none"> (a) Reduced Federal Revenue Sharing (b) Reduced State Shared Taxes 2) Tax Levy Limitations imposed by Chapter 90 of the Laws of Wisconsin 1975 3) Escalating costs 4) High property tax rate 5) Cudahy has the 2d highest tax rate of the south side of Milwaukee County communities 	<ol style="list-style-type: none"> 1) Total cost of implementation of the Union's plan is only \$3,135.52 2) Cost of health insurance for anticipated retirees is only \$1,247.40 (No one is scheduled to retire) 3) Savings realized by replacing retiree with young policeman. (Ass'n. Exhibits 3 and 4)

	CITY	UNION
Comparison of offers to <u>Public Employees</u> in Comparable Communities:	<ol style="list-style-type: none"> 1) Criteria for the seven cities chosen by the City for comparison: <ol style="list-style-type: none"> (a) Industrial community (b) Population (c) Those historically used for comparison (Emp. Exh 4) <ol style="list-style-type: none"> (1) Franklin (2) Greendale (3) Greenfield (4) Oak Creek (5) St. Francis (6) South Milwaukee (7) West Milwaukee 2) City questions use of some of Union's cities for comparison (City's Brief p. 5 et seq.) 3) Cudahy ranks 2d on the basis of the <u>total</u> monthly compensation as compared to the seven south side communities used for comparative purposes (Emp. Exh. 10) also, highest fringe benefit percentage of those communities 4) Retirement insurance is a relatively new benefit in the 22 Milwaukee Area Communities <ol style="list-style-type: none"> (a) 14 have none (b) Six provide 100% (c) Two provide partial (Emp. Exh 8) 	<p>Union selected 14 area communities: (Ass'n Ex. 1)</p> <ol style="list-style-type: none"> 1) Milwaukee 2) Milwaukee Co. Sheriffs 3) Oak Creek 4) West Milwaukee 5) Glendale 6) South Milwaukee 7) Wauwatosa 8) Fox Point 9) Greendale 10) Whitefish Bay 11) Hales Corners 12) Brown Deer 13) West Allis 14) St. Francis <ol style="list-style-type: none"> 2) City's statement and Exhibits 10 & 11 are misleading because <ol style="list-style-type: none"> (a) Includes only communities which have lower compensation (b) Does not show cost of living increases (c) Educational Incentives will be reduced in 1976 (d) Shift differential is speculative expense 3) Even so Cudahy has the lowest base wage and second lowest health insurance benefit
Cost of Living:	<ol style="list-style-type: none"> 1) National Level - 7% 2) Increases in cost of living have declined: <ol style="list-style-type: none"> (a) Jan. 76 - 6.8% (b) Feb. 76 - 6.3% (c) Mar. 76 - 6.1% 3) In 1975 the Union received a 10% increase which exceeded the 7% figure 4) City's offer represents a 7% wage increase and a total 8.42% total package increase - it exceeds the cost of living increases and is reasonable while the Union's proposal of 7.39% wages and 9% total goes too far in excess of the cost of living <p>Ed. Note - Notice that the City's figures are national only.</p>	<ol style="list-style-type: none"> 1) Milwaukee cost of living increase was 8.8% in 1975 2) While the trend has decreased in the first three months of 1976, in April 76 it showed signs of an increase 3) In actuality the Consumer Price Index in the nation stands at 6.1% as of April 76 in terms of cost of living 4) Cost of living in Milwaukee is the highest in the North Central area and the 6th highest in the country - Family of four on an Intermediate budget requires \$16,480 <p>Ed. Note - Notice that the Union's figures are for <u>Milwaukee</u> not Cudahy.</p>